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SERVICE DATE – MAY 10, 2006

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-853 (Sub-No. 3X)]

Kansas & Oklahoma Railroad, Inc.—Abandonment Exemption—in Rice County, KS

Kansas & Oklahoma Railroad, Inc. (KO), has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 6-mile line of railroad between milepost 85.0, at Chase, and milepost 91.0 at Silica, in Rice County, KS. The line traverses United States Postal Service Zip Codes 67524 and 67573.<sup>1</sup>

KO has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at

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<sup>1</sup> Atlantic & Pacific Transportation Company (APR) was granted an exemption to lease and operate an approximately 4-mile portion of the line that extends from approximately milepost 87.0 (at or near Chase, KS), to approximately milepost 91.0 (at or near Silica, KS), in Atlantic & Pacific Railroad and Transportation Company—Lease and Operation Exemption—Kansas & Oklahoma Railroad, STB Finance Docket No. 34451 (STB served July 20, 2004).

APR filed a petition for exemption to discontinue service over the 4-mile portion of the line. Notice of the filing was served on March 22, 2006, and published in the Federal Register on March 23, 2006 (71 FR 147709). KO may not consummate abandonment until APR receives authority or an exemption to discontinue its service

49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 9, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 22, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by

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over that portion of the line.

<sup>2</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>3</sup> Each offer of financial assistance must be accompanied by the filing fee which as of April 19, 2006, is set at \$1,300. See Regulations Governing Fees for Services Performed in Connection with Licensing and related Services-2006 Update, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006). See 49 CFR 1002.2(f)(25).

May 30, 2006, with: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, 1455 F St., N.W., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void ab initio.

K&O has filed an environmental report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by May 15, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), KO shall file a notice of consummation with the Board to signify that it has exercised the authority granted abandoned its 6-mile line. Pursuant to the same provisions, KO shall file a notice of consummation with the Board to signify that it has exercised the authority granted to it to fully consummate the abandonment of the line after APR receives authority or an

exemption to discontinue service over portion of the line between mileposts 87.0 and 91.0. If consummation has not been effected by KO's filing of a notice of consummation by May 10, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.<sup>4</sup>

Board decisions and notices are available on our website at  
"WWW.STB.DOT.GOV."

Decided: May 3, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

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<sup>4</sup> KO shall serve a copy of this notice on APR within 5 days after its publication, and certify to the Board that it has done so.